

**BOROUGH OF WESTWOOD
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING**

MINUTES

February 4, 2013

APPROVED 3/4/13

1. OPENING OF THE MEETING

The meeting was called to order at approximately 8:00 p.m.

Open Public Meetings Law Statement:

This meeting, which conforms with the Open Public Meetings Law, Chapter 231, Public Laws of 1975, is a Regular Meeting of the Westwood Zoning Board of Adjustment.

Notices have been filed with our local official newspapers and posted on the municipal bulletin board.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL:

PRESENT: William Martin, Chairman
Christopher Owens, Vice-Chairman
Michael Bieri
Robert Bicocchi
Eric Oakes
Guy Hartman (Alt #1)
Chris Montana (Alt #2)

ALSO PRESENT: David Rutherford, Esq., Board Attorney
Louis Raimondi, Brooker Engineering,
Board Engineer
Stan Moronski appeared on behalf of
Steve Lydon, Burgis Associates,
Board Planner
Catherine Gregory, Acting Board Planner
for KMACK North/South

ABSENT: Vernon McCoy (excused absence)
Matthew Ceplo (excused absence)

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4. MINUTES - The Minutes of the **1/7/13** were approved on motions made by Michael Bieri, seconded by Eric Oakes, and carried unanimously on roll call vote.

5. CORRESPONDENCE:

1. Letter dated 1/11/13 from Louis Raimondi, Brooker Engineering, RE: Niarra, LLC, 312 Kinderkamack Road, with estimate of construction costs;

2. Letter from Scott Berkoben, Esq. dated 1/23/13 with architectural and elevation plans, dated 1/23/13 drawn by Andrew Fethes, RE: MJK of USA, 711 Broadway;

3. Letter from David Lafferty, Esq. dated 1/25/13 RE: KMACK North, objecting to request from Mr. Meisel below;

4. Letter from Bruce Meisel of First Westwood Realty, dated 1/19/13, RE: KMACK North, requesting the matter be carried to 3/4/13, as his planner was unable to be present on 2/4/13;

5. Letter from NJ Coalition of Automotive Retailers, dated 1/30/13; Mr. Rutherford advised this letter would be acknowledged as received, but it would not be part of the record of KMACK North, and the Board would not rely upon it in any way to make its decisions in the matter.

6. VOUCHERS: A motion to approve vouchers totaling **\$8,145.00** was made by Christopher Owens, seconded by Robert Bicocchi, and carried unanimously on roll call vote.

7. RESOLUTIONS:

1. Niarra, 312 Kinderkamack Road; 199 Fairview Avenue, Block 811, Lots 4 & 12 - Variance - Attorney Rutherford gave an overview of the Resolution of Approval. A motion for approval of the Resolution was made by Michael Bieri and seconded by Eric Oakes. On roll call vote, all members voted yes.

2. Thank You Resolution RE: Ray Arroyo for years of service on the Zoning Board - The Board acknowledged Ray Arroyo, elected as Councilmember, with thanks and gratitude, for his years of service to the Zoning Board. A motion for approval of the Resolution was made by Michael Bieri and

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seconded by Eric Oakes. On roll call vote, all members voted yes.

8. PENDING NEW BUSINESS: None

9. VARIANCES, SUBDIVISIONS AND/OR SITE PLANS, APPEALS, INTERPRETATIONS:

SWEARING IN OF BOARD PROFESSIONALS FOR PUBLIC HEARINGS
The Board Professionals were sworn in.

1. KMACK South, 40 Kinderkamack Road, Block 1607, Lots 12, 13 & 14 - Variance & Site Plan Approval - Carried at request of applicant, pending completion of KMACK North;

2. Van Grouw, 27 Ruckner Road - Appeal - Carried to 3/4/13; plans received would be delivered;

3. KMACK North II - Site Plan Approval - Sean Moronski, Substitute Board Planner, stepped down from the dais. Catherine Gregory, Substitute Board Planner for the KMACK applications, took a seat at the dais. David Lafferty, Esq. represented the applicant. Bruce Meisel, Esq. was present as an objector.

Mr. Rutherford advised there were seven Board Members present, and only six were qualified to vote. The use variance request needs five affirmative votes to carry. It was noted that although Guy Hartman was absent 9/10/12, that hearing dealt only with the jurisdictional issue, and no testimony was taken. Therefore, Mr. Hartman was eligible to vote. Chris Montana would have to listen to the C/D's of the November and December meetings. Matthew Ceplo and Vernon McCoy would have to listen to the C/D of this evening's hearing.

Mr. Rutherford further advised as to the request for adjournment by Mr. Meisel. He reviewed case law and Appellate Division cases and prepared a written opinion, which he read into the record. The Board is entitled to give each case a fair and full hearing. The Board should hear from both attorneys on the procedural issue of the request to carry to 3/4/13, Mr. Rutherford stated. Mr. Meisel was heard first since he was the maker of the request. He wished to complete this evening, but Mr. Steck, his planner, who is very familiar with the Borough's land use scheme, was unable to appear on short notice. Mr. Meisel

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estimated his expert's testimony would take 45 approximately minutes. Mr. Steck is the only expert witness, along with his own testimony and comments as a property owner.

Mr. Lafferty was heard and stated he did not feel Mr. Meisel's issue should hold up the public portion of the hearing. They are present and should be able to testify. He acknowledged there is not a full complement of Board Members to take a vote. That is a practical situation, Mr. Lafferty noted, but we should hear from the public and not have to make them come back on 3/4/13. There is no reason why Mr. Meisel could have had an expert here tonight, he said, and he does not understand why that should delay this any further. The Board should proceed and hear from Members of the public tonight.

Mr. Martin states the Board takes the objectors very seriously and gives the same time to objectors and applicants. They want to be fair to both sides. He is inclined to hear from interested parties tonight, and adjourn to 3/4/13 to have Mr. Meisel's expert testify. There should be no further delays, Mr. Martin added. We do not have the full Board, and five affirmative votes are needed. Mr. Meisel asked if he should give his comments tonight or on 3/4/13. Chairman Martin commented it would be better for him to comment when he brings his expert. Mr. Rutherford asked Mr. Montana to listen to the C/D's of November and December meetings. A memo would be sent to the Construction Office, to prepare C/D's for Mr. Ceplo and Mr. McCoy for tonight's hearing, and Mr. Montana for November and December.

The matter was opened to the public for statements. Michael Meisten, 58 Kingsberry Avenue, Westwood, came forward and had an exhibit to hand out. Mr. Meisten distributed an extensive written statement with research and law for reference, with attachments. That exhibit was marked Exhibit Meisten-1, consisting of his statement, police reports, photographs, ordinances and Medici case law. Overall, Mr. Meisten stated the proposed use would not promote the general welfare and would result in substantial detriment to the public good. The applicant has not satisfied the burden of proof, and the use variance should not be granted. This exhibit is on file.

Mr. Lafferty objected to the police reports from Emerson and Westwood, stating they were hearsay. Mr.

Meisten objected to that, as they were obtained directly from the police department's official files. Mr. Rutherford was inclined to accept the reports but cautioned the Board in terms on drawing any firm conclusions from that evidence or relying upon it in making its decision. The Board took note of Mr. Rutherford's advice.

Mr. Lafferty cross-examined Mr. Meisten. He asked if he had any knowledge of a domestic dispute in 2008 and whether he thought it would occur at 7Eleven. He did not have any knowledge of any specific incidences. Mr. Lafferty commented domestic disputes can happen anywhere. Mr. Meisten agreed. Is your main concern traffic, Mr. Lafferty asked. Mr. Meisten said the volume of traffic, given the complexity of the existing traffic, was a concern. He was not a traffic expert nor did he commission an expert to testify. Mr. Lafferty continued. Regarding Burkes, there is a parking lot at the Knights of Columbus that they use. What would he like to see there, he asked Mr. Meisten. Mr. Meisel came forward and sat behind the witness, and Mr. Lafferty stated Mr. Meisel was coaching the witness. Mr. Rutherford cautioned Mr. Meisel not to make any recommendations to the witness. Mr. Meisel moved to the back. Mr. Lafferty stated any applicant that wants to open a convenience store anywhere in Westwood must come before the Board, since the Zoning Code does not permit them anywhere in the Borough. What other sites are suitable, Mr. Lafferty asked, and Mr. Meisten responded closer to the hospital or on Broadway by Kmart. None of those properties are zoned for this use Mr. Lafferty noted. Mr. Meisten said those locations are more suitable as his children do not live near them. There were no further questions of Mr. Meisten.

Patrick Flannery, 29 Kingsberry Avenue, was sworn in. He delivered mail in Westwood for 20 years and previously served on the Zoning Board many years ago. He commended Mr. Meisten on his statement. The traffic is heavy and visibility is difficult. These Quick-Check type convenience stores have 24-hour deliveries. It is an added detraction to the quality of life on Kingsberry. His problem is getting in and out of the block. Quality of life will change on the block. He implores the Board to look at it as a resident of the block. The Master Plan does not support this, and there is no benefit to the town at large. This will draw more traffic, which we do not need. He asked the Board to deny the application and support the Master Plan.

Mr. Lafferty cross-examined Mr. Flannery and asked him what he would like to see there. He would like to see anything but 7Eleven, but does not like to see it vacant. Mr. Flannery is concerned about the children on Kingsberry. He did not hear the testimony of any witnesses or review anything in the case. His opinion would stay the same. There were no further questions.

The next person to address the Board was Norman Dorf, Tenaflly, who came forward and was sworn in. Mr. Dorf was the property owner, and Mr. Lafferty did not represent him. Mr. Dorf produced a rendering and five photos, which were marked D-1, D-2, D-3, D-4, D-5 and D-6, respectively. The building occupies 100% of the property, with no green areas. It is an eyesore, as can be seen from four current photos, and has been vacant for eight years. The photo of a 7Eleven in Tenaflly shown, does not even look like a 7Eleven, is very discreet, is across from his job, and it is very convenient. There are no problems with it. It is aesthetically pleasing, and is a positive thing for the town. Mr. Dorf explained He owned the subject property for five years, and they chose Mr. Aynilian because they thought this would be good for the town. He thanked the Board for all the hearings, as it has gone on for 18 months. It is a commercial piece of property and anything that goes in will generate more traffic. It will anchor the other stores that go into this. Most people don't go out of the way for a 7eleven---it is usually the same traffic that goes by. Look what it has been, and look what it could be. He would appreciate if the Board would approve this.

Mr. Lafferty cross-examined Mr. Dorf, asking how likely it would be for a car dealer to go back in. The likelihood is very slim. They want the highway and with a franchise, they must approve the site. Ms. Gregory asked if the Tenaflly site was granted a use variance, and he responded yes. Mr. Montana asked if it is near residential homes, and the response was yes. Mr. Martin asked if he read the Master Plan. Mr. Dorf read some of the changes and the ordinance, but not the Master Plan. Mr. Meisten asked Mr. Dorf if the Tenaflly 7Eleven was owned by him as his business, and the response was no. He asked if he lived within 200' of the subject site, and the response was no, but he spends a great deal of time near there. Mr. Meisten asked if he wanted to benefit financially and the response

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was of course, but with respect for the town. They chose the applicant because they thought he would be successful.

Mr. Meisel, 263 Center Avenue, came forward and was sworn. He stated the site was vacant since the hospital closed. Mr. Lafferty cross-examined Mr. Meisel. Mr. Meisel commented regarding the Master Plan. Mr. Lafferty asked Mr. Meisel if he had extensive real estate holdings in the Borough. Mr. Meisel could not/would not answer, saying it was irrelevant. Mr. Lafferty was intending to establish interest in the site.

Mr. Lafferty asked Mr. Meisel if he ever obtained a use variance for any of the properties, and Mr. Meisel said approx. 10 years ago, and outside of Westwood, Mr. Meisel obtained use variances on behalf of Pascack Community Bank. Mr. Lafferty commented this was a test of motive and interest. He was showing it is okay for one of Mr. Meisel's properties to obtain a use variance, but not this one. Did your bank obtain a use variance in Rochelle Park that was contradictory to the Master Plan, Mr. Lafferty asked. Mr. Meisel did not recall the Master Plan in Rochelle Park, saying it was written prior to the application, and each town and application are separate and distinct.

Mr. Lafferty continued, asking Mr. Meisel if he was familiar with the Master Plan Re-examination of 2011. Does he know the recommendations for the LB3 Zone, he asked. Mr. Meisel said it was a broad discussion with property owners and businesses. Each district was related to other districts and needed to be viewed as a whole. They have impacts on each other. Also, he was not present for all the hearings. Mr. Lafferty asked if he knew the principal permitted uses in the LB3 zone, and since he did not, Mr. Lafferty read the list from the Master Plan, page 45. It stated retail sale of items. What zone would 7Eleven be permitted in, or are they not permitted in any zone, he asked. Mr. Meisel would have the answer for the next meeting. A few more questions were relayed regarding the Master Plan, also related to the hospital reopening. There were no further questions at this time. Mr. Meisel would continue at the next hearing.

Mr. Martin asked Mr. Lafferty for an extension of time to the next meeting on 3/4/13. Mr. Lafferty consented to the extension, due to the fact that there were not enough members for a vote. The hearing would be for Mr. Steck to

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testify. Mr. Rutherford advised there would be no further interested parties, except for limited comments regarding Mr. Steck's and Mr. Meisel's testimony. No further notice would be given.

The Board took a recess from 10:05-10:15 pm.

Sean Moronski, Substitute Board Planner, returned to the dais. Ms. Gregory departed.

4. A Cleaner City/Nail Salon 711 Broadway - Use Variance - Scott Berkoben, Esq. represented the applicant. Architect Andrew Fethes was present. The owner of the property is The Bernecker Family Trust, and the representative, Mrs. Bernecker, was also present. Mr. Berkoben gave an overview of the application for use variance. The proposal was for dry cleaners with storage and nail salon. The most recent previous use was the sale of auto parts and retail sports items. The application will meet the positive and negative criteria. There is an access easement from Harold Street, and he has photos and a court order from 2008. Mr. Martin questioned whether the Board received a site plan. Mr. Berkoben stated there was an 8-1/2 x 11" attachment to the application. Mr. Martin said that was insufficient, and Mr. Fethes should prepare a plan showing the parking. Mr. Berkoben wanted to use a plan prepared by Jenny Architect. Mr. Raimondi examined the document. There was reference to a survey by RL Engineering, which should be produced. Mr. Martin stated we need a document that shows the changes, and parking. A new drawing is required.

Andrew Fethes, NJ Licensed Architect, was sworn in, qualified and accepted. Ms. Fethes testified they measured the property, took photographs and prepared the Drawing, A1.0, marked Exhibit A1, dated 1/23/13. The front half of the building would be a dry cleaning, 4,508 sf, and the back half of the building is labeled dry cleaner storage, 3,812 sf. There are minor interior improvements, including a bathroom and mechanical areas in the drycleaners, fitting rooms and space for drop off and pick up. There are clothing presses, washing machines, conveyor belts and systems. There is a separate entrance for the nail salon, 1,984.5 sf. There are no improvements planned for the exterior of the building.

Photos taken by Mr. Fethes were introduced, seven sheets in total, marked Exhibit A2. The total area is 10,304.5 sf, and the building is currently vacant. Mr. Raimondi asked if they would close up the fake door on the outside. They would take it into consideration. Mr. Moronski asked where the delivery trucks would load and unload. Mr. Fethes indicated his client could better answer the question, but the back door could accommodate deliveries. Mr. Martin asked him to show the loading dock on the plan. Mr. Bieri inquired about the door being closed up, and a window would bring in light. Mr. Martin questioned the witness. He asked if the building was fire-suppressed. Mr. Fethes would provide the answer at the next meeting. Skylights would be repaired. Mr. Martin asked about the X on the wall between the dry cleaning store and nail Mr. Fethes had no knowledge, except it may be crawl space or for equipment.

The matter was carried to 3/4/13.

5. Sickinger/The Sickinger Family Trust C/O Wayne Henderson, 484 4th Avenue Wash- Variance, Site Plan Application (William Martin recused) - Scheduled for 3/4/13;

10. DISCUSSION:

1. Adoption of 2013 Procedural Rules and Bylaws - Board Members were in receipt and Mr. Rutherford advised there would be a Rider attached; a motion for approval was made by Christopher Owens, seconded by Eric Oakes, and carried unanimously on roll call vote. A copy would be forwarded to the Council Liaison.

2. Approval of Annual Report of the Zoning Board of Adjustment for 2012 - Board Members were in receipt of the Annual Report. A motion for approval was made by Michael Bieri, seconded by Robert Bicocchi, and carried unanimously on roll call vote. Individual copies would be forwarded to the Mayor and Council Members.

11. ADJOURNMENT - On motions, made seconded and carried, the meeting was adjourned at approx. 11:01 p.m.

Respectfully submitted,

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MARY R. VERDUCCI, Paralegal
Zoning Board Secretary